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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
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11 BARRY LAMON,

No. CIV S-03-0423-FCD-CMK-P

12 Plaintiff,

13 vs.

ORDER

14 C.K. PLILER, et al.,

15 Defendants.  
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17 Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant  
18 to 42 U.S.C. § 1983. Pending before the court is a motion for reconsideration of the magistrate  
19 judge's November 10, 2005, order.

20 Pursuant to Eastern District of California Local Rule 72-303(f), a magistrate  
21 judge's order shall be upheld unless "clearly erroneous or contrary to law." Upon review of the  
22 entire file, the court finds that it does not appear that the magistrate judge's ruling was clearly  
23 erroneous or contrary to law. Specifically, the court notes that the motion for reconsideration  
24 challenges an order requiring the filing of a fourth amended complaint which omits unexhausted  
25 claims. On February 1, 2005, the magistrate judge recommended that defendant's motion to  
26 dismiss for lack of exhaustion be granted and that plaintiff be required to file a fourth amended

1 complaint which omits unexhausted claims. Plaintiff was provided an opportunity to object to  
2 the recommendations and did so by filing objections on April 13, 2005. On April 28, 2005, the  
3 recommendations were adopted in full. The November 10, 2005, order currently challenged does  
4 nothing more than set a date for plaintiff's compliance with the court's prior decisions requiring  
5 plaintiff to file a fourth amended complaint. The November 10, 2005, order is, therefore,  
6 affirmed.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The motion for reconsideration is denied;
- 9 2. The magistrate judge's November 10, 2005, order is affirmed;
- 10 3. Plaintiff shall file and serve on defendants a fourth amended complaint  
11 which omits unexhausted claims within 30 days of the date of service of this order; and
- 12 4. Defendants shall file a response to plaintiff's fourth amended complaint  
13 within 20 days of the date of service thereof.

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15 DATED: January 19, 2006

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17 /s/ Frank C. Damrell Jr.  
18 FRANK C. DAMRELL JR.  
19 United States District Judge  
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